that the statement need not be contemporaneous, but must be uttered under the stress of some startling occurrence, and within such a time after the occurrence that the excitement is still controlling the declarant and preventing any possible fabrication. 3 Wigmore, *Evidence* (1905) sec. 1747. It is clear that the statement in the above case is admissible under this latter theory, but it is hard to see how it meets the requirement of Dean Thayer's view. It seems obvious that a serious miscarriage of justice might take place if the statement were not admitted, and that in this case the spontaneous exclamation theory is preferable. For a note showing the confusion in the *res gestae* cases see (1914) 23 YALE LAW JOURNAL, 282.

HIGHWAYS—"RIGHT OF WAY"—SLEDS.—The plaintiff was injured in a collision between a double-runner plank sled, on which she was riding, and the defendant's buggy. The defendant, who was driving up the hill, failed to turn to the right of the beaten path on the icy road, although warned by the shouts of those at the foot of the hill and the approaching light on the sled. The plaintiff sued for damages. *Held,* that she should recover, because the coaster had an equal privilege with a horse-drawn vehicle to the use of the road, and the defendant was negligent in failing to turn out after the warning, although the plaintiff had been equally negligent in attempting the ride. *Roennau v. Whitson* (1920, Iowa) 175 N. W. 849.

The instant case in holding that the coaster had a privilege to use the road accords with the weight of authority that coasting on country roads is not a nuisance *per se*. See note 42 L. R. A. (N. S.) 865. But if the road is a much traveled public highway and the sled used carried several persons, it would seem otherwise. See *Reusch v. Licking Rolling Mills Co.* (1904) 118 Ky. 369, 372, 80 S. W. 1168; see *Eastburn v. United States Exp. Co.* (1909) 225 Pa. 33, 38, 73 Atl. 977, 979. Nor does the sound view on last clear chance stand in the way of recovery. See (1920) 29 YALE LAW JOURNAL, 542, 697.

INTERNATIONAL LAW—PRIZE—CARGO CONSIGNED TO ENEMY SUBSIDIARY OF AMERICAN CORPORATION.—The Vacuum Oil Company of New York shipped a quantity of oil f. o. b. to its Australian and German subsidiary corporations on a German vessel. The American corporation undertook by agreement with its subsidiaries to assume any loss arising from their failure to receive the cargo. The stock of the European subsidiaries was owned practically entirely by the parent company in the United States. The ship and cargo were seized as prize. The parent company sought restoration of the goods. *Held,* that the goods must be condemned, since the parent company was not the owner. *The Kronprinzessin Cecilie (Part Cargo ex)* (1919, P. C.) 121 Law T. Rep. 457.

See COMMENT, *supra,* p. 772.

MALICIOUS PROSECUTION—REASONABLE AND PROBABLE CAUSE.—The complaint in an action for malicious prosecution charged that the defendant, without probable cause, by falsely testifying before the grand jury procured the indictment of the plaintiff upon which he was subsequently tried and acquitted. *Held,* that the plaintiff should recover. *Johnson v. Brady* (1920, Ind. App.) 126 N. E. 250.

The instant case seems sound and in accord with the weight of authority. The court based its decision upon the grounds that if the evidence showed that the defendant at no time believed the plaintiff to have been guilty of the alleged larceny, and if he caused the indictment of the plaintiff, it was without probable cause, and malice may be inferred. For the effect of a reversed judgment as evidence in malicious prosecution, see COMMENT (1920) 29 YALE LAW JOURNAL, 325. For a discussion of other phases of the problems involved in the instant case, see COMMENT (1916) 25 *ibid.,* 328; (1909) 18 *ibid.,* 433.